



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Ref: 8OC

SEP 28 2007

Honorable Max Baucus
United States Senator
8 Third Street East
Kalispell, MT 59901

Dear Senator Baucus:

Thank you, again, for participating in EPA Administrator Stephen Johnson's latest visit to Libby to meet with residents there regarding EPA's ongoing clean-up work. I understand from EPA Headquarters in Washington, DC, that EPA has completed its response to your and Senator Boxer's document request. To complement that information, I would like to provide some background and an update on the status of the lawsuits that the United States has pending against W.R. Grace for its actions which led to the vermiculite asbestos contamination in Libby. The topic of the lawsuits was touched on briefly during the latest Libby visit, and I hope this additional information will more fully describe EPA's two-pronged enforcement efforts on behalf of the people of Libby and the United States.

Civil Enforcement

EPA first requested Grace's cooperation in investigations and cleanup in 2000. Grace refused to enter into a consent agreement for such initial activities. Grace then purchased KDC, which was in the process of negotiating access to the mine and other contaminated properties, and denied EPA access for purposes of cleanup and disposal of contaminated materials. EPA prevailed in an access case and settled potential access penalties with Grace through the provision of a \$2.75 million Supplemental Environmental Project as part of the settlement to cover medical care for asbestos-related disease in Libby. EPA also issued a unilateral order to Grace to cleanup the Export Plant.

EPA filed a cost-recovery claim against Grace on March 31, 2001. Grace petitioned for bankruptcy protection on April 1, 2001. At that time, EPA's costs were approximately \$54 million. EPA prevailed in District Court, and the full amount was awarded to EPA. However, because of the bankruptcy, that liquidated amount awaits payout upon implementation of a plan of reorganization, which is not likely to occur for another three years. Grace appealed the district court decision, and the 9th Circuit ruled in EPA's favor. Grace appealed to the Supreme Court, and a writ of certiorari was denied.

Since that time, EPA has negotiated two consent orders with Grace for the cleanup of the Flyway and for participation in a Superfund Remedial Investigation/Feasibility Study (RI/FS) at Operable Unit 3 (OU3), which is the mine site and its environs. EPA has incurred significant cleanup costs during the intervening years and expects that future expenditures will be substantial. Grace is in negotiations with EPA on a resolution to those claims.

Criminal Enforcement

The United States has initiated criminal enforcement against Grace and seven individuals for knowing endangerment under the Clean Air Act and for obstruction of justice. One of those defendants is now deceased. After several adverse motions rulings from the District Court, the U.S. sought interlocutory relief from the 9th Circuit Court of Appeals. The 9th Circuit just ruled in favor of the U.S. on these critical issues (e.g., amphibole asbestos is a hazardous substance, statute of limitations was misapplied). A trial date for the criminal case has not been set yet.

If you or your staff have questions regarding this brief description of EPA's enforcement actions relating to the Libby cleanup, please contact me or our Regional Congressional Liaison, Sandy Fells, at 303-312-6604. I'm sure you will appreciate that, while some information concerning these ongoing enforcement actions is not appropriate for open discussion, the EPA Region 8 Enforcement Program staff could freely provide additional facts and findings regarding these cases. Again, thank you for your continued interest in this site and EPA's work there.

Sincerely,



Robert E. Roberts
Regional Administrator

